



United States Department of the Interior



FISH AND WILDLIFE SERVICE

North Dakota Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501

IN REPLY REFER TO:
06E15000-EPA WQS

April 7, 2021

Ms. Holly Wirick
Water Quality Section
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

Dear Ms. Wirick:

Thank you for the opportunity to provide comments on the proposed revisions to North Dakota's water quality standards (WQS). North Dakota Department of Environmental Quality (NDDEQ) has proposed revisions to its WQS which reflect the Clean Water Act Section 304 (a) criteria recommendations for the protection of aquatic life. When the state adopts the revised WQS, NDDEQ will submit the WQS to U.S. Environmental Protection Agency (EPA) for review and approval or disapproval. The U.S. Fish and Wildlife Service (Service) offers the following comments under the authority of and in accordance with the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) and the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d, 54 Stat. 250).

Threatened and Endangered Species

If a federal agency authorizes, funds, or carries out a proposed action, the responsible federal agency, or its designated agent, is required to evaluate whether the action may affect listed species. If the federal agency determines the action may affect, is likely to adversely affect listed species, then the federal agency shall request formal section 7 consultation with this office, or work with this office to remove the likely adverse effects before proceeding. If the evaluation shows a no effect determination on listed species, further consultation is not necessary.

Species List

In accordance with section 7(c) ESA (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*), we have determined that the following federally listed species may occur in the counties of your project area (this list is considered valid for 90 days):

<u>Species</u>	<u>Status</u>	<u>Expected Occurrence</u>
Whooping Crane (<i>Grus americana</i>)	Endangered	Spring and fall migration

Pallid Sturgeon (<i>Scaphirhynchus albus</i>)	Endangered	Resident in Missouri River and Yellowstone River
Northern Long-eared bat (<i>Myotis septentrionalis</i>)	Threatened	Resident, seasonal migrant
Piping Plover (<i>Charadrius melodus</i>)	Threatened	Summer resident, seasonal migrant
Dakota Skipper (<i>Hesperia dacotae</i>)	Threatened	Year round resident
Rufa Red Knot (<i>Calidris canutus rufa</i>)	Threatened	Rare seasonal migrant
Western Prairie Fringed Orchid (<i>Platanthera praeclara</i>)	Threatened	Tallgrass prairie inhabitant; occasionally found in disturbed sites

Whooping Crane

The Aransas Wood Buffalo Population (AWBP) of the endangered whooping crane (*Grus americana*) is the only self-sustaining migratory population of whooping cranes remaining in the wild. Whooping cranes breed in the wetlands of Wood Buffalo National Park in Alberta and the Northwest Territories of northern Canada, and overwinter on the Texas coast. Whooping cranes in the AWBP annually migrate through North Dakota during their spring and fall migrations.

Whooping cranes occupy numerous habitats such as cropland and pastures; wet meadows; shallow marshes; shallow portions of rivers, lakes, reservoirs, and stock ponds; and both freshwater and alkaline basins for feeding and loafing. Overnight roosting sites frequently require shallow water in which to stand and rest. The period of concern for the whooping crane correlates with either the spring or fall migration period, April 1-May 15 and September 10-October 31.. The birds normally do not stay in any one area for long during migration.

Pallid Sturgeon

The pallid sturgeon (*Scaphirhynchus albus*) is an ancient fish that evolved in turbid, free-flowing, large rivers with braided channels, sandbars and extensive backwater habitats, and was listed in 1990 as an endangered species. Historically, pallid sturgeon were found in the lower 200 miles of the Yellowstone River; the Missouri River from Fort Benton, Montana to St. Louis, Missouri; and in portions of the Mississippi River basin. The species is now found only in fragmented segments of free flowing rivers within the historic range, as well as upstream portions of impoundments.

Northern Long-Eared Bat

The northern long-eared bat (*Myotis septentrionalis*) (NLEB) is listed as threatened under the ESA due to declines caused by white-nose syndrome, a deadly bat disease. The state of North Dakota is within the known range of the NLEB and in the white nose syndrome zone. During the summer, NLEBs typically roost singly or in colonies in cavities, underneath bark, crevices, or

hollows of both live and dead trees and/or snags (typically ≥ 3 inches dbh). Males and non-reproductive females may also roost in cooler places, like caves and mines. This bat seems opportunistic in selecting roosts, using tree species based on presence of cavities or crevices or presence of peeling bark. It has also been occasionally found roosting in structures like barns and sheds (particularly when suitable tree roosts are unavailable). They forage for insects in upland and lowland woodlots and tree lined corridors. During the winter, NLEBs predominately hibernate in caves and abandoned mine portals. Additional habitat types may be identified as new information is obtained.

Piping Plover

The project area contains potential habitat for the piping plover (*Charadrius melodus*), a federally threatened species. Potential piping plover habitat in North Dakota is near alkali lakes and consists of sparsely vegetated beaches, salt-encrusted mud flats, and/or gravelly salt flats, and adjacent uplands 200 ft. (61 m) above the high water mark of alkali lakes and wetlands. Piping Plovers also nest on shorelines and islands of the Missouri River System including Lake Sakakawea.

Dakota Skipper

The Dakota skipper (*Hesperia dacotae*), a federally threatened species, is a small to medium-sized hesperiine butterfly associated with high quality prairie ranging from wet-mesic tallgrass prairie to dry-mesic mixed grass prairie. The first type of habitat is relatively flat and moist native bluestem prairie. Three species of wildflowers are usually present: wood lily (*Lilium philadelphicum*), harebell (*Campanula rotundifolia*), and smooth camas (*Zigadenus elegans*). The second habitat type is upland (dry) prairie that is often on ridges and hillsides. Bluestem grasses and needlegrasses dominate these habitats. On this habitat type, three wildflowers are typically present in high quality sites that are suitable for Dakota skipper: pale purple coneflower (*Echinacea pallida*) and upright prairie coneflowers (*Ratibida columnifera*) and blanket flower (*Gaillardia* sp.). Avoidance of impacts to native prairie habitat is recommended to reduce the risk of adverse effects to this species. Critical habitat has also been designated for this species in North Dakota; for survey protocols, additional details, and locations see the following website: <http://www.fws.gov/Midwest/endangered/insects/dask/index.html>.

Rufa Red Knot

The rufa red knot is a robin-sized shorebird listed as threatened under the Endangered Species Act (see: <http://www.gpo.gov/fdsys/pkg/FR-2014-12-11/pdf/2014-28338.pdf> for more information). The red knot migrates annually between its breeding grounds in the Canadian Arctic and several wintering regions, including the Southeast United States, the Northeast Gulf of Mexico, northern Brazil, and Tierra del Fuego at the southern tip of South America. Although it is primarily a coastal species, small numbers of rufa red knots are reported annually across the interior United States (i.e., greater than 25 miles from the Gulf or Atlantic Coasts) during spring and fall migration. These reported sightings are concentrated along the Great Lakes. The red knot likely uses North Dakota habitats similar to those of the least tern and piping plover. The species does not breed in this state.

Western Prairie Fringed Orchid

The Western prairie fringed orchid (*Platanthera praeclara*) is known to occur in southeast North Dakota, however the life cycle of the plant often makes it difficult to detect. Although the plant is typically associated with intact tallgrass native prairie, the orchid has also been found on disturbed sites. Potential habitats generally include mesic upland prairies, wet prairies, sedge meadows, subirrigated prairies and swales in sand dune complexes.

Eagle Guidance

Bald eagles (*Haliaeetus leucocephalus*) and Golden Eagles (*Aquila chrysaetos*) are protected from a variety of harmful actions via take prohibitions in both the MBTA and the BGEPA. The BGEPA, enacted in 1940 and amended several times, prohibits take of bald eagles and golden eagles, including their parts, nests, young or eggs, except where otherwise permitted pursuant to federal regulations. Incidental take of eagles from actions such as electrocutions from power lines or wind turbine strikes are prohibited unless specifically authorized via an eagle incidental take permit from the Service. BGEPA provides penalties for persons who "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part, nest, or egg thereof." BGEPA defines take to include the following actions: "pursue, shoot, shoot at, **poison**, wound, kill, capture, trap, collect, molest or disturb." The Service expanded this definition by regulation to include the term "destroy" to ensure that "take" also encompasses destruction of eagle nests.

The Service appreciates the opportunity to work with the EPA on our shared conservation goals. Should you have any questions regarding these comments, please have your staff contact Jessica Johnson of my staff at (701) 355-8507 or at the letterhead address, or contact me at (701) 355-8512.

Sincerely,

DREW BECKER

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Drew Becker
ND Ecological Services Office Supervisor